

FIFTY-SEVENTH DAY - APRIL 8, 2004**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
SECOND SESSION****FIFTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, April 8, 2004

PRAYER

The prayer was offered by Pastor Dana Bainbridge, First United Methodist Church, Omaha.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Bourne who was excused; and Senators Brown, Burling, Combs, Cunningham, Engel, Hartnett, Kremer, Landis, Loudon, Maxwell, Mossey, and Preister who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-sixth day was approved.

**SELECT COMMITTEE REPORTS
Enrollment and Review****Correctly Reengrossed**

The following bill was correctly reengrossed: LB 479.

Correctly Engrossed

The following bill was correctly engrossed: LB 692.

ER9135

Enrollment and Review Change to LB 692

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 1, the matter beginning with "energy" in line 1 through line 4

has been struck and "judgments against the state; to amend section 25-21,211, Reissue Revised Statutes of Nebraska; to change provisions relating to payment of judgments; and to repeal the original section." inserted.

(Signed) Ray Mossey, Chairperson

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 7, 2004, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Fischer, Gary L.
Family Housing Advisory Services, Inc.

REPORT

The following report was received by the Legislature:

**Criminal Justice, Commission on Law Enforcement and
Traffic Stop Report**

RESOLUTION

LEGISLATIVE RESOLUTION 397. Read. Considered.

LR 397 was adopted with 25 ayes, 0 nays, 11 present and not voting, and 13 excused and not voting.

MOTION - Approve Appointment

Senator Jensen moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment found on page 1522:

Health and Human Services System
Nancy Montanez, Director

Voting in the affirmative, 28:

Aguilar	Combs	Hudkins	Price	Stuhr
Baker	Cudaback	Janssen	Quandahl	Stuthman
Brashear	Cunningham	Jensen	Raikes	Tyson
Bromm	Erdman	Jones	Redfield	Wehrbein
Brown	Friend	Maxwell	Schrock	
Byars	Hartnett	Pedersen, Dw.	Smith	

Voting in the negative, 0.

Present and not voting, 14:

Beutler	Foley	Kruse	Pederson, D.	Thompson
Chambers	Johnson	McDonald	Schimek	Vrtiska
Connealy	Kremer	Mines	Synowiecki	

Excused and not voting, 7:

Bourne	Engel	Louden	Preister
Burling	Landis	Mossey	

The appointment was confirmed with 28 ayes, 0 nays, 14 present and not voting, and 7 excused and not voting.

BILL ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 983 with 34 ayes, 2 nays, 6 present and not voting, and 7 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 983.

A BILL FOR AN ACT relating to motor fuels; to amend sections 60-1307, 66-482 to 66-489.01, 66-496, 66-498, 66-499, 66-4,105, 66-4,106, 66-4,114, 66-4,116, 66-4,140, 66-4,141, 66-4,143 to 66-4,147, 66-4,149, 66-502, 66-525, 66-685 to 66-687, 66-698, 66-6,100, 66-6,106, 66-6,107, 66-6,109.01 to 66-6,111, 66-712, 66-713, 66-717, 66-718, 66-720, 66-722, 66-726, 66-727, 66-733 to 66-737, 66-1334, 66-1345, 66-1401, 66-1510, 66-1521, 77-2704.05, and 77-2734.03, Reissue Revised Statutes of Nebraska, and sections 39-2215, 60-1303, and 60-1306, Revised Statutes Supplement, 2003; to change and eliminate provisions relating to motor fuels taxation; to impose taxes; to eliminate provisions relating to tax credit gasoline and the Diesel Fuel Tax Act; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal sections 66-490 to 66-492, 66-494, 66-4,118 to 66-4,121, 66-4,124 to 66-4,132, 66-4,134, 66-4,142, and 66-650 to 66-683, Reissue Revised Statutes of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 40:

Aguilar	Connealy	Hudkins	Mossey	Schrock
Baker	Cudaback	Janssen	Pedersen, Dw.	Smith
Beutler	Cunningham	Johnson	Pederson, D.	Stuhr
Brashear	Engel	Kremer	Price	Stuthman
Bromm	Erdman	Kruse	Quandahl	Synowiecki
Brown	Foley	Maxwell	Raikes	Thompson
Byars	Friend	McDonald	Redfield	Vrtiska
Combs	Hartnett	Mines	Schimek	Wehrbein

Voting in the negative, 0.

Present and not voting, 3:

Chambers	Jones	Tyson
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Excused and not voting, 6:

Bourne	Jensen	Louden
Burling	Landis	Preister

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

GENERAL FILE

LEGISLATIVE BILL 32. The first Standing Committee amendment, FA1445, found on page 505, was renewed.

Pending.

LEGISLATIVE BILL 958. Title read. Considered.

The Standing Committee amendment, AM3226, found on page 1138, was considered.

Senator Chambers renewed his pending amendment, FA1613, found on page 1390, to the Standing Committee amendment.

Senator Chambers moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 27:

Brashear	Engel	Kremer	Preister	Stuthman
Brown	Erdman	Kruse	Quandahl	Tyson
Burling	Foley	Landis	Redfield	Wehrbein
Combs	Friend	Maxwell	Schrock	
Connealy	Jensen	Mines	Smith	
Cunningham	Jones	Pedersen, Dw.	Stuhr	

Present and not voting, 16:

Aguilar	Byars	Johnson	Raikes
Baker	Cudaback	Louden	Schimek
Beutler	Hartnett	McDonald	Synowiecki
Bromm	Janssen	Pederson, D.	Vrtiska

Excused and not voting, 5:

Bourne	Hudkins	Mossey	Price	Thompson
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The Chambers amendment lost with 1 aye, 27 nays, 16 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Chambers renewed his pending amendment, FA1614, found on page 1390, to the Standing Committee amendment.

Senator Brashear offered the following motion:
Recommit to the Judiciary Committee.

Senator Brashear withdrew his motion.

Senator Chambers moved for a call of the house. The motion prevailed with 16 ayes, 1 nay, and 32 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 3:

Chambers	Louden	Schimek
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Voting in the negative, 17:

Brashear	Cunningham	Kruse	Quandahl	Tyson
Bromm	Engel	Maxwell	Redfield	
Combs	Erdman	Mines	Smith	
Connealy	Foley	Pedersen, Dw.	Stuhr	

Present and not voting, 21:

Aguilar	Cudaback	Jones	Preister	Wehrbein
Baker	Friend	Kremer	Raikes	
Beutler	Janssen	Landis	Schrock	
Brown	Jensen	McDonald	Stuthman	
Burling	Johnson	Pederson, D.	Vrtiska	

Excused and not voting, 8:

Bourne	Hartnett	Mossey	Synowiecki
Byars	Hudkins	Price	Thompson

The Chambers amendment lost with 3 ayes, 17 nays, 21 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Senator Chambers renewed his pending amendment, FA1615, found on page 1390, to the Standing Committee amendment.

SENATOR JANSSEN PRESIDING

SENATOR CUDABACK PRESIDING

Pending.

MOTION - Adjourn Sine Die

Senator Friend moved to adjourn sine die.

SPEAKER BROMM PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 34 ayes, 0 nays, and 15 not voting.

Senator Landis requested a roll call vote on the Friend motion to adjourn sine die.

Voting in the affirmative, 3:

Friend	Stuthman	Tyson
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Voting in the negative, 38:

Aguilar	Combs	Jensen	Mines	Schrock
Baker	Connealy	Johnson	Pedersen, Dw.	Smith
Beutler	Cudaback	Jones	Pederson, D.	Stuhr
Brashear	Cunningham	Kremer	Price	Thompson
Bromm	Engel	Kruse	Quandahl	Vrtiska
Brown	Erdman	Landis	Raikes	Wehrbein
Burling	Foley	Louden	Redfield	
Byars	Janssen	McDonald	Schimek	

Present and not voting, 2:

Chambers Maxwell

Excused and not voting, 6:

Bourne	Hudkins	Preister
Hartnett	Mossey	Synowiecki

The Friend motion to adjourn sine die failed with 3 ayes, 38 nays, 2 present and not voting, and 6 excused and not voting.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LR 300, 301, 328, 329, 392, and 393 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 300, 301, 328, 329, 392, 393, and 397.

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LB 983.

AMENDMENTS - Print in Journal

Senator Synowiecki filed the following amendment to LR 11CA: AM3632

(Amendments to Second Final Reading copy)

- 1 1. On page 3, line 8, after the first period insert the
- 2 following new subsection:
- 3 "(6) The Legislature may authorize slot machines within a
- 4 licensed racetrack enclosure if live thoroughbred horseracing has
- 5 been conducted at such enclosure during each of the four years
- 6 immediately preceding such authorization."; in line 12 strike "and"
- 7 and insert a comma; and in line 16 after "gaming" insert ", and to
- 8 authorize slot machines at licensed racetrack enclosures".

Senator Baker filed the following amendment to LB 1065:

AM3615

(Amendments to E & R amendments, AM7228)

- 1 1. Strike sections 1 to 3, 6 to 11, and 18 to 21 and
2 insert the following new sections:
- 3 "Section 1. Section 66-489, Reissue Revised Statutes of
4 Nebraska, as amended by section 12, Legislative Bill 983,
5 Ninety-eighth Legislature, Second Session, 2004, is amended to
6 read:
- 7 66-489. (1) At the time of filing the return required by
8 section 66-488, such producer, supplier, distributor, wholesaler,
9 or importer shall, in addition to the tax imposed pursuant to
10 sections 66-4,140, 66-4,145, and 66-4,146 and in addition to the
11 other taxes provided for by law, pay a tax of ten and one-half
12 cents per gallon upon all motor fuels as shown by such return,
13 except that there shall be no tax on the motor fuels reported if
14 (a) the required taxes on the motor fuels have been paid, (b) the
15 motor fuels have been sold to a licensed exporter exclusively for
16 resale or use in another state, (c) the motor fuels have been sold
17 from a Nebraska barge line terminal, pipeline terminal, refinery,
18 or ethanol or biodiesel facility, including motor fuels stored
19 offsite in bulk, by a licensed producer or supplier to a licensed
20 distributor, (d) the motor fuels have been sold by a licensed
21 distributor or licensed importer to a licensed distributor or to a
22 licensed wholesaler and the seller acquired ownership of the motor
23 fuels directly from a licensed producer or supplier at or from a
1 refinery, barge, barge line, pipeline terminal, or ethanol or
2 biodiesel facility, including motor fuels stored offsite in bulk,
3 in this state or was the first importer of such fuel into this
4 state, or (e) as otherwise provided in this section. Such
5 producer, supplier, distributor, wholesaler, or importer shall
6 remit such tax to the department.
- 7 (2) As part of filing the return required by section
8 66-488, each producer of ethanol shall, in addition to other taxes
9 imposed by the motor fuel laws, pay an excise tax of one and
10 one-quarter cents per gallon through December 31, 2004, and
11 commencing January 1, 2010, and two and one-half cents per gallon
12 commencing January 1, 2005, through December 31, 2009, on natural
13 gasoline purchased for use as a denaturant by the producer at an
14 ethanol facility. All taxes, interest, and penalties collected
15 under this subsection shall be remitted to the State Treasurer for
16 credit to the Agricultural Alcohol Fuel Tax Fund, except that
17 commencing January 1, 2005, through December 31, 2009, one and
18 one-quarter cents per gallon of such excise tax shall be credited
19 to the Ethanol Production Incentive Cash Fund.
- 20 (3)(a) Motor fuels, methanol, and all blending agents or
21 fuel expanders shall be exempt from the taxes imposed by this
22 section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146,
23 when the fuels are used for buses equipped to carry more than seven
24 persons for hire and engaged entirely in the transportation of

25 passengers for hire within municipalities or within a radius of six
26 miles thereof.

27 (b) The owner or agent of any bus equipped to carry more
1 than seven persons for hire and engaged entirely in the
2 transportation of passengers for hire within municipalities, or
3 within a radius of six miles thereof, in lieu of the excise tax
4 provided for in this section, shall pay an equalization fee of a
5 sum equal to twice the amount of the registration fee applicable to
6 such vehicle under the laws of this state. Such equalization fee
7 shall be paid in the same manner as the registration fee and be
8 disbursed and allocated as registration fees.

9 (c) Nothing in this section shall be construed as
10 permitting motor fuels to be sold tax exempt. The department shall
11 refund tax paid on motor fuels used in buses deemed exempt by this
12 section.

13 (4) Natural gasoline purchased for use as a denaturant by
14 a producer at an ethanol facility as defined in section 66-1333
15 shall be exempt from the motor fuels tax imposed by subsection (1)
16 of this section as well as the tax imposed pursuant to sections
17 66-4,140, 66-4,145, and 66-4,146.

18 (5) Motor fuels purchased on a Nebraska Indian
19 reservation where the purchaser is a Native American who resides on
20 the reservation shall be exempt from the motor fuels tax imposed by
21 this section as well as the tax imposed pursuant to sections
22 66-4,140, 66-4,145, and 66-4,146.

23 (6) Motor fuels purchased for use by the United States
24 Government or its agencies shall be exempt from the motor fuels tax
25 imposed by this section as well as the tax imposed pursuant to
26 sections 66-4,140, 66-4,145, and 66-4,146.

27 (7) In the case of diesel fuel, there shall be no tax on
1 the motor fuels reported if (a) the diesel fuel has been indelibly
2 dyed and chemically marked in accordance with regulations issued by
3 the Secretary of the Treasury of the United States under 26 U.S.C.
4 4082 or (b) the diesel fuel contains a concentration of sulphur in
5 excess of five-hundredths percent by weight or fails to meet a
6 cetane index minimum of forty and has been indelibly dyed in
7 accordance with regulations promulgated by the Administrator of the
8 Environmental Protection Agency pursuant to 42 U.S.C. 7545.

9 Sec. 4. Section 66-726, Reissue Revised Statutes of
10 Nebraska, as amended by section 51, Legislative Bill 983,
11 Ninety-eighth Legislature, Second Session, 2004, is amended to
12 read:

13 66-726. (1) The department may adjust all errors in
14 payment, refund tax paid on motor fuel destroyed, refund tax
15 overpaid on motor fuel, and refund an amount equal to the
16 per-gallon tax imposed by this state on sales of motor fuel on
17 which tax was paid in this state but which was sold in a state
18 other than Nebraska.

19 (2)(a) Motor fuels shall be exempt from the taxes imposed

20 by sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when
21 the fuels are used for agricultural, quarrying, industrial, or
22 other nonhighway use.

23 (b) The department shall refund tax paid on motor fuels
24 used for an exempt purpose. The purchaser of tax-paid motor fuels
25 used for an exempt purpose shall file a claim for refund with the
26 department on forms prescribed by the department and shall provide
27 such documentation and maintain such records as the department
1 reasonably requires to substantiate that the fuels were used for
2 exempt purposes.

3 (c) The refund claim shall include: (i) The name of
4 claimant; (ii) the make, horsepower, and other mechanical
5 description of machinery in which the motor fuels were used; (iii)
6 a statement as to the source or place of business where such motor
7 fuels, used solely for agricultural, quarrying, industrial, or
8 other nonhighway uses, were acquired; that no part of such motor
9 fuels were used in propelling licensed motor vehicles; and that the
10 motor fuels for which refund of the tax thereon is claimed were
11 used solely for agricultural, quarrying, industrial, or other
12 nonhighway uses; and (iv) any other information deemed necessary by
13 the department.

14 (d) The department shall deduct (i) from each claim for
15 refund of tax paid on purchases of motor vehicle fuels under this
16 subsection two and one-quarter cents per gallon through December
17 31, 2004, and commencing January 1, 2010, and three and one-half
18 cents per gallon commencing January 1, 2005, through December 31,
19 2009, of the tax paid and (ii) from each claim for refund of tax
20 paid on purchases of diesel fuel under this subsection one cent per
21 gallon of the tax paid.

22 (e) The department shall transmit monthly to the State
23 Treasurer a report of the number of gallons of motor vehicle fuel
24 for which refunds have been approved under this subsection.
25 Through December 31, 2004, and commencing January 1, 2010, and the
26 State Treasurer shall thereupon transfer from the Highway Trust
27 Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter
1 cents per gallon approved for refund, and commencing January 1,
2 2005, through December 31, 2009, the State Treasurer shall
3 thereupon transfer from the Highway Trust Fund (a) to the Ethanol
4 Production Incentive Cash Fund one and one-quarter cents per gallon
5 approved for refund and (b) to the Agricultural Alcohol Fuel Tax
6 Fund one and one-quarter cents per gallon approved for refund.

7 (3) No refund shall be allowed unless a claim is filed
8 setting forth the circumstances by reason of which refund should be
9 allowed. Such claim shall be filed with the department within
10 three years from the date of the payment of the tax.

11 (4) In each calendar year, no claim for refund related to
12 motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel
13 can be for an amount less than twenty-five dollars.

14 (5) The department shall administer and enforce this

15 section. The department may call to its aid when necessary any
16 member of the Nebraska State Patrol, any police officer, any county
17 attorney, or the Attorney General. The employees of the department
18 are empowered to stop and inspect motor vehicles, to inspect
19 premises, and temporarily to impound motor vehicles or motor fuels
20 when necessary to administer this section.

21 (6) The department may adopt and promulgate such rules
22 and regulations as are necessary for the prompt and effective
23 enforcement of this section.

24 (7) Any claimant for refund of motor fuels tax under this
25 section who is unable to produce the original copy of any invoice
26 to substantiate the refund for the reason that the same has been
27 lost, mutilated, or destroyed may make proof of his or her claim by
1 affidavit and such other evidence as may be required by the
2 department, and if such claim is verified by investigation, such
3 claim may be allowed.

4 (8) The changes made to this section by this legislative
5 bill apply to motor fuels purchased during any tax year ending or
6 deemed to end on or after January 1, 2005, under the Internal
7 Revenue Code.

8 Sec. 11. Sections 1, 4, and 12 of the act become
9 operative on January 1, 2005. The other sections of this act
10 become operative on their effective date.

11 Sec. 12. Original sections 66-489 and 66-726, Reissue
12 Revised Statutes of Nebraska, as amended by sections 12 and 51,
13 respectively, Legislative Bill 983, Ninety-eighth Legislature,
14 2004, are repealed.

15 Sec. 13. Original sections 66-4,124, 66-4,134, 66-1344,
16 66-1344.01, 66-1345, 66-1345.01, 66-1519, and 77-4103, Reissue
17 Revised Statutes of Nebraska, are repealed."

18 2. On page 15, lines 2 and 3, strike "effective date of
19 this act" and insert "operative date of this section".

20 3. On page 16, strike lines 5 and 6; and in line 27
21 strike "66-4,134" and insert "66-489, 66-4,134, 66-726".

22 4. On page 19, line 7, strike "eight", show as stricken,
23 and insert "ten".

24 5. Renumber the remaining sections accordingly.

Senators Landis, Bromm, Combs, Connealy, Friend, Hartnett, Janssen,
Mines, Raikes, and Schimek filed the following amendment to LB 650:
AM3531

1 1. Strike the original sections and all amendments

2 thereto and insert the following new sections:

3 "Section 1. Section 13-2802, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 13-2802. Whenever creation of a municipal county is
6 proposed involving a city of the metropolitan class, the
7 interjurisdictional planning commission shall include in its plan a
8 recommendation with regard to the territory within which any

9 metropolitan utilities district shall have and may exercise the
10 power of eminent domain pursuant to subsection (2) of section
11 14-2116. The plan shall further include a recommendation with
12 regard to the territory which shall be deemed to be within the
13 corporate boundary limits or extraterritorial zoning jurisdiction
14 of a municipality or a municipality dissolved by the creation of
15 the municipal county for purposes of ~~sections 57-1301 to 57-1307~~
16 the State Natural Gas Regulation Act. The question of creation of
17 the municipal county shall not be submitted to a vote under section
18 13-2810 until a law adopting the provisions required by this
19 section has been enacted.

20 Sec. 2. Section 66-1801, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 66-1801. Sections 66-1801 to 66-1857 and sections 5 to
23 12 of this act shall be known and may be cited as the State Natural
24 Gas Regulation Act.

1 Sec. 3. Section 66-1804, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1804. (1) The commission shall have full power,
4 authority, and jurisdiction to regulate natural gas public
5 utilities and may do all things necessary and convenient for the
6 exercise of such power, authority, and jurisdiction. Except as
7 provided in the Nebraska Natural Gas Pipeline Safety Act of 1969,
8 and notwithstanding any other provision of law, such power,
9 authority, and jurisdiction shall extend to, but not be limited to,
10 all matters encompassed within the State Natural Gas Regulation
11 Act, ~~and sections 57-1301 to 57-1307~~.

12 (2) The State Natural Gas Regulation Act and all grants
13 of power, authority, and jurisdiction in the act made to the
14 commission shall be liberally construed, and all incidental powers
15 necessary to carry into effect the provisions of the act are
16 expressly granted to and conferred upon the commission.

17 Sec. 4. Section 66-1852, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 66-1852. (1) Except as provided in sections 5 to 12 of
20 this act, ~~57-1301 to 57-1307 as those statutes govern~~
21 ~~jurisdictional utilities and metropolitan utilities districts~~, no
22 person, public or private, shall extend duplicative or redundant
23 natural gas mains or other natural gas services into any area which
24 has existing natural gas utility infrastructure or where a contract
25 has been entered into for the placement of natural gas utility
26 infrastructure.

27 (2) This section shall not apply in any area in which two
1 or more jurisdictional utilities share authority to provide natural
2 gas within the same territory under franchises issued by the same
3 city.

4 Sec. 5. (1) Except as provided in subsection (2) of this
5 section, the initial boundaries of the exclusive service areas of
6 jurisdictional utilities, cities, and metropolitan utilities

7 districts shall extend to any location at which any jurisdictional
8 utility, city, and metropolitan utilities district was providing
9 natural gas service to customers on March 15, 2004.

10 (2) Where two or more jurisdictional utilities are
11 providing natural gas service to customers within the same area
12 pursuant to franchise agreements with the same city, such
13 jurisdictional utilities shall possess and may exercise equal
14 authority in the exclusive service area of such city and its
15 extraterritorial jurisdiction.

16 Sec. 6. Except as provided in sections 8 and 9 of this
17 act, the formal boundaries of the exclusive service areas of
18 jurisdictional utilities, cities, or metropolitan utilities
19 districts shall be established by the commission upon the following
20 basis:

21 (1) Except as provided in subdivision (4) of this
22 section, for any city owning, maintaining, and operating a natural
23 gas distribution system, the exclusive service area for the city
24 shall be its initial service area boundaries and all the territory
25 within the corporate boundaries of the city and its
26 extraterritorial zoning jurisdiction as established by its
27 governing body pursuant to state law as such extraterritorial
1 zoning jurisdiction existed on March 15, 2004, and as such
2 jurisdiction may be extended on such basis from time to time, when
3 the city formally expresses its intention to provide natural gas
4 service and evidences such intent;

5 (2) Except as provided in subdivision (4) of this
6 section, for any metropolitan utilities district, the exclusive
7 service area for the district shall be all the territory within the
8 initial service area boundaries of the district and all the
9 territory where the district provides natural gas service within
10 the entire corporate boundaries of any city and shall extend to the
11 extraterritorial zoning jurisdiction of any such city as
12 established by its governing body pursuant to state law as such
13 extraterritorial zoning jurisdiction existed on March 15, 2004, and
14 as such jurisdiction may be extended on such basis from time to
15 time;

16 (3) Except as provided in subdivision (4) of this
17 section, for any jurisdictional utility, the exclusive service area
18 for the utility shall be the initial service area boundaries of the
19 area within which the utility provided natural gas service on March
20 15, 2004, and any area into which it has extended such service
21 subsequent to such date as authorized or recognized by the
22 commission; and

23 (4) For any jurisdictional utility, metropolitan
24 utilities district, or city providing natural gas service to an
25 entire city under a franchise agreement with that city, the
26 exclusive service area for such jurisdictional utility,
27 metropolitan utilities district, or city shall extend to the
1 corporate boundaries of the city and to its extraterritorial

2 jurisdiction as established by its governing body pursuant to state
3 law as such extraterritorial jurisdiction existed on March 15,
4 2004, and as such extraterritorial jurisdiction may be extended on
5 such basis from time to time.

6 Sec. 7. (1) Within ninety days following the effective
7 date of this section, each jurisdictional utility, city, and
8 metropolitan utilities district shall file with the commission a
9 detailed map or maps of its exclusive service area as it exists on
10 March 15, 2004, drawn to a scale of not less than one inch per mile
11 or drawn to a larger scale, if required for clarity, showing the
12 location of its natural gas pipelines and related facilities as of
13 March 15, 2004. The commission may require that such maps be
14 updated as often as the commission deems reasonably necessary to
15 carry out its responsibilities under the State Natural Gas
16 Regulation Act.

17 (2) The commission shall prepare or cause to be prepared
18 a composite map of this state showing the exclusive service areas
19 of jurisdictional utilities, cities, and metropolitan utilities
20 districts as submitted by such entities pursuant to this section.

21 (3) The form and detail of all maps shall be determined
22 by the commission.

23 Sec. 8. (1) The initial exclusive service area
24 boundaries for each jurisdictional utility, city, or metropolitan
25 utilities district shall be shown by the maps filed in accordance
26 with section 7 of this act. After notice and hearing provided to
27 the affected jurisdictional utilities, cities, or metropolitan
1 utilities districts, the commission by order shall thereafter
2 modify those boundaries as set forth in the State Natural Gas
3 Regulation Act.

4 (2) When an exclusive service area is modified by the
5 commission to transfer areas including then existing customers then
6 served by the facilities of another jurisdictional utility, city,
7 or metropolitan utilities district, unless a voluntary exchange of
8 facilities is agreed upon by the parties involved and approved by
9 the commission, the commission shall require the transfer of the
10 facilities presently serving these customers, subject to the
11 Municipal Natural Gas System Condemnation Act and any other
12 relevant state statute governing condemnation.

13 (3) Contracts between jurisdictional utilities, cities,
14 metropolitan utilities districts, or any combination of them, to
15 designate exclusive service areas and customers to be served by any
16 of those entities or for the exchange of customers between these
17 entities, when approved by the commission, shall be valid and
18 enforceable and shall be incorporated into the appropriate
19 exclusive service areas established pursuant to subsection (1) of
20 this section. The commission shall approve a contract if it finds
21 that the contract will eliminate or avoid unnecessary duplication
22 of facilities, will provide adequate natural gas service to all
23 areas and customers affected, will promote the efficient and

24 economical use and development of the natural gas systems of the
25 contracting natural gas utilities, and is in the public interest.

26 (4) Except in accordance with the provisions of a
27 customer choice program or other unbundling program approved by the
1 commission or as otherwise permitted in the State Natural Gas
2 Regulation Act, a jurisdictional utility, city, or metropolitan
3 utilities district shall not serve or offer to serve natural gas
4 customers in an exclusive service area assigned to another natural
5 gas utility and a jurisdictional utility, city, or metropolitan
6 utilities district shall not construct facilities to serve natural
7 gas customers in an exclusive service area assigned to another such
8 jurisdictional utility, city, or metropolitan utilities district.
9 The state, a jurisdictional utility, or any other person who is
10 injured or threatened with injury by conduct prohibited by this
11 section may initiate a contested case proceeding with the
12 commission. Upon finding a violation of this section, the
13 commission shall order appropriate corrective action, including
14 discontinuance of the unlawful service to natural gas customers,
15 removal of the unlawful facilities, and any combination of such
16 remedies, or any other disposition the commission deems just and
17 reasonable.

18 Sec. 9. Following the establishment of exclusive service
19 areas pursuant to section 7 of this act, a jurisdictional utility,
20 city, or metropolitan utilities district shall not construct or
21 extend facilities into any area not presently within the exclusive
22 service area of a jurisdictional utility, city, or metropolitan
23 utilities district, or furnish natural gas service to a prospective
24 customer not then being served by a jurisdictional utility, city,
25 or metropolitan utilities district, except upon application to the
26 commission for a modification of its existing exclusive service
27 area. The commission shall, following a hearing on the matter,
1 determine whether it is in the public interest for the applying
2 jurisdictional utility, city, or metropolitan utilities district or
3 another such utility, city, or district to serve the area and in
4 doing so, the commission shall be guided by a balance of the
5 following factors:

6 (1) The expressed preferences of residents or landowners
7 in the area regarding their choice for a natural gas service
8 provider;

9 (2) The proximity of then existing natural gas mains to
10 the area, including the length of time such lines have been in
11 existence;

12 (3) The orderly development of natural gas utility
13 infrastructure as a whole;

14 (4) The impact of granting the application on then
15 existing and future ratepayers of jurisdictional utilities,
16 metropolitan utilities districts, or cities owning, maintaining,
17 and operating natural gas distribution systems;

18 (5) The economic feasibility of the utility providing

19 service to projected customers within the area;
20 (6) The elimination or prevention of duplicative or
21 redundant natural gas mains and facilities supplying the area;
22 (7) The willingness and good faith intent of the
23 jurisdictional utility, metropolitan utilities district, or city
24 owning, maintaining, and operating a natural gas distribution
25 system to provide adequate and dependable service in the area to be
26 assigned; and

27 (8) Whether the customers in the area have the right to
1 vote for the natural gas rate and service quality regulator for the
2 area.

3 Sec. 10. A jurisdictional utility, city, or metropolitan
4 utilities district shall furnish retail service, upon application,
5 to any person within its exclusive service area if it is
6 economically feasible to service and supply the person. The
7 natural gas service shall be furnished by the jurisdictional
8 utility, city, or metropolitan utilities district within a
9 reasonable time after application is made.

10 Sec. 11. Whenever any city is furnished natural gas
11 pursuant to a franchise agreement with a jurisdictional utility, no
12 metropolitan utilities district or other city proposing to provide
13 natural gas service pursuant to a franchise agreement shall solicit
14 such city to enter into a franchise agreement or promote
15 discontinuance of natural gas service with the jurisdictional
16 utility, unless a specific invitation to submit a proposal on such
17 franchise has been formally presented to the board of directors of
18 the metropolitan utilities district or the governing body of the
19 city proposing to provide natural gas service pursuant to a
20 franchise agreement. For purposes of this section, a specific
21 invitation to submit a proposal shall mean a resolution adopted by
22 the governing body of a city. Whenever a specific invitation to
23 submit a proposal is received by the board of directors of a
24 metropolitan utilities district or the governing body of a city
25 proposing to provide natural gas service pursuant to a franchise
26 agreement, the invitation shall be considered by the board or the
27 governing body of the city in open public session at its next
1 regularly scheduled meeting.

2 Sec. 12. All books, records, vouchers, papers,
3 contracts, engineering designs, and any other data of a
4 metropolitan utilities district relating to the public interest of
5 an extension or enlargement of natural gas mains or natural gas
6 services, whether in written or electronic form, shall be open and
7 made available for public inspection, investigation, comment, or
8 protest upon reasonable request during business hours, except that
9 such books, records, vouchers, papers, contracts, designs, and
10 other data shall be subject to section 84-712.05.

11 Sec. 13. Section 75-109.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 75-109.01. Except as otherwise specifically provided by

14 law, the Public Service Commission shall have jurisdiction, as
15 prescribed, over the following subjects:

16 (1) Common carriers, generally, pursuant to sections
17 75-101 to 75-158;

18 (2) Grain pursuant to the Grain Dealer Act and the Grain
19 Warehouse Act and sections 89-1,104 to 89-1,108;

20 (3) Manufactured homes and recreational vehicles pursuant
21 to the Uniform Standard Code for Manufactured Homes and
22 Recreational Vehicles;

23 (4) Modular housing units pursuant to the Nebraska
24 Uniform Standards for Modular Housing Units Act;

25 (5) Motor carrier registration and safety pursuant to
26 sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and
27 75-384;

1 (6) Pipeline carriers and rights-of-way pursuant to the
2 State Natural Gas Regulation Act and sections ~~57-1301 to 57-1307~~
3 ~~and~~ 75-501 to 75-503;

4 (7) Railroad carrier safety pursuant to sections 74-918,
5 74-919, 74-1323, and 75-401 to 75-430;

6 (8) Telecommunications carriers pursuant to the Automatic
7 Dialing-Announcing Devices Act, the Emergency Telephone
8 Communications Systems Act, the Enhanced Wireless 911 Services Act,
9 the Intrastate Pay-Per-Call Regulation Act, the Nebraska
10 Telecommunications Regulation Act, the Nebraska Telecommunications
11 Universal Service Fund Act, the Telecommunications Relay System
12 Act, the Telephone Consumer Slamming Prevention Act, and sections
13 86-574 to 86-580;

14 (9) Transmission lines and rights-of-way pursuant to
15 sections 70-301 and 75-702 to 75-724;

16 (10) Water service pursuant to the Water Service
17 Regulation Act; and

18 (11) Jurisdictional utilities governed by the State
19 Natural Gas Regulation Act. If the provisions of Chapter 75 are
20 inconsistent with the provisions of the State Natural Gas
21 Regulation Act, the provisions of the State Natural Gas Regulation
22 Act control.

23 Sec. 14. Original sections, 13-2802, 66-1801, 66-1804,
24 66-1852, and 75-109.01, Reissue Revised Statutes of Nebraska, are
25 repealed.

26 Sec. 15. The following sections are outright repealed:
27 Sections 57-1301 to 57-1307, Revised Statutes Supplement, 2002.".

Senator Erdman filed the following amendment to LB 391:
AM3631

(Amendments to E & R amendments, AM7227)

1 1. On page 1, line 8, after "minor" insert "fifteen
2 years of age or older".

Senator Erdman filed the following amendment to LB 391:

AM3634

(Amendments to E & R amendments, AM7227)

- 1 1. Insert the following new sections:
- 2 "Section 1. Sections 1 to 7 of this act provide a
- 3 procedure for judicial emancipation of minors.
- 4 Sec. 2. A minor who is at least fifteen years of age,
- 5 married, or living apart from his or her parents or legal guardian,
- 6 and who is a legal resident of the county, may petition the
- 7 district court of that county for a decree of emancipation.
- 8 Sec. 3. (1) A petition for emancipation shall state:
- 9 (a) The name, age, and address of the minor;
- 10 (b) The names and addresses of the parents of the minor;
- 11 (c) The name and address of any legal guardian of the
- 12 minor;
- 13 (d) If no parent or guardian can be found, the name and
- 14 address of the child's nearest known relative residing within this
- 15 state;
- 16 (e) That the minor is seeking a decree of emancipation;
- 17 and
- 18 (f) That the minor willingly lives apart from his or her
- 19 parents or legal guardian with the consent or acquiescence of the
- 20 parents or legal guardian.
- 21 (2) If any of the facts required by this section are not
- 22 known, the petition shall so state.
- 23 Sec. 4. A notice of filing, together with a copy of the
- 1 petition for emancipation, shall be served upon:
- 2 (1) The parents or legal guardian of the minor or, if the
- 3 parents or legal guardian cannot be found, the nearest known
- 4 relative of the minor residing within the state, if any;
- 5 (2) The legal custodian of the minor, if any;
- 6 (3) The appropriate probation officer for his or her
- 7 review and recommendation, if the minor is a ward of the court; and
- 8 (4) The county attorney of the county in which the matter
- 9 is to be heard.
- 10 Sec. 5. In making its determination regarding the
- 11 petition for emancipation, the court shall consider whether the
- 12 parents or legal guardian of the minor have consented to
- 13 emancipation; whether the minor is substantially able to support
- 14 himself or herself without financial assistance; whether the minor
- 15 is sufficiently mature and knowledgeable to manage his or her
- 16 affairs without the guidance of parents or legal guardian; and
- 17 whether emancipation is in the best interest of the minor. The
- 18 court shall advise the petitioner of the consequences of
- 19 emancipation.
- 20 Sec. 6. (1) If the court determines that the petition
- 21 for emancipation should be granted, it shall enter a decree of
- 22 emancipation. Such a decree emancipates the minor for all purposes
- 23 and removes the disability of minority insofar as that disability
- 24 may affect the incurring of indebtedness or contractual obligations

25 of any kind; the acquiring, encumbering, and conveying of property
 26 or any interest therein; the litigation and settlement of
 27 controversies; the consenting to medical, dental, or psychiatric
 1 care without parental consent, knowledge, or liability; the
 2 enrolling in any school or college; and the establishment of his or
 3 her own residence. For these purposes, the minor shall be
 4 considered in law as an adult and any obligation he or she incurs
 5 is enforceable by and against such minor without regard to his or
 6 her minority.
 7 (2) Unless otherwise provided by the decree, the
 8 obligation of support otherwise owed a minor by his or her parent
 9 or legal guardian is terminated by the entry of the decree.
 10 Sec. 7. A decree of emancipation does not affect the
 11 status of the minor for purposes of any provision of law which:
 12 (1) Prohibits the sale, purchase, or consumption of
 13 intoxicating liquor to or by a person under twenty-one years of
 14 age;
 15 (2) Prohibits gaming or employment in gaming by or of a
 16 person under twenty-one years of age;
 17 (3) Restricts the ability to marry a person under the age
 18 of seventeen years of age; or
 19 (4) Governs matters relating to juveniles."
 20 2. Renumber the remaining sections accordingly.

RESOLUTIONS

LEGISLATIVE RESOLUTION 400. Introduced by Baker, 44.

WHEREAS, the Legislature is charged with promoting fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act; and

WHEREAS, the Legislature is charged with maintaining and advancing the efficiency and availability of telecommunications services; and

WHEREAS, the Legislature has previously debated and structured the role of public utilities in delivery of telecommunications through the enactment of LB 827 in 2001; and

WHEREAS, the Legislature is charged with ensuring that consumers pay only reasonable charges for telecommunications services; and

WHEREAS, the Legislature intends to preserve and promote the best interests of the telecommunications consumer; and

WHEREAS, the Legislature enacted LB 827 in 2001, which prohibited state agencies and political subdivisions from competing with private sector companies in the provision of telecommunication services but did allow for the use of such entities' dark fiber; and

WHEREAS, the Nebraska Supreme Court found in *In re Application of Lincoln Electric System v. Nebraska Public Service Commission*, 265 Neb. 70 (2003), subdivision (1)(b) of section 86-128 and subsection (2) of section 86-575, originally contained in LB 827, to be unconstitutional; and

WHEREAS, the United States Supreme Court recently issued an opinion

in *Nixon v. Missouri Municipal League*, 541 U.S. . . (2004) in which the court held that "any entity" as stated in 42 U.S.C. section 253(a) of the Telecommunications Act of 1996 does not include state political subdivisions, thereby upholding the authority of states to restrict delivery of telecommunications services by political subdivisions; and

WHEREAS, the Transportation and Telecommunications Committee of the Legislature held a public hearing on AM 3471 to LB 20 on April 6, 2004, in response to *Nixon v. Missouri Municipal League*; and

WHEREAS, the Transportation and Telecommunications Committee desires to address reenactment of those provisions of LB 827 found unconstitutional by the Nebraska Supreme Court, but was unable to do so before the Ninety-eighth Legislature, Second Session, adjourned Sine Die; and

WHEREAS, the Legislature will address the issue during the next Legislative session which convenes January 5, 2005; and

WHEREAS, the Legislature intends that the Public Service Commission preserve and promote universal service in all telecommunications markets.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature intends to address the decision in *Nixon v. Missouri Municipal League* during the Ninety-ninth Legislature, First Session, which convenes January 5, 2005.

2. That the Legislature intends to reenact the provisions of LB 827 that were declared unconstitutional by the Nebraska Supreme Court in *In re Application of Lincoln Electric System v. Nebraska Public Service Commission*, 265 Neb. 70 (2003), specifically subdivision (1)(b) of section 86-128 and subsection (2) of section 86-575.

3. That the Legislature desires to convey these policy statements to the Public Service Commission.

Laid over.

LEGISLATIVE RESOLUTION 401. Introduced by Erdman, 47; Smith, 48.

WHEREAS, Leroy Cundall coached high school and college football for fourteen years; and

WHEREAS, Mr. Cundall served as superintendent of Lodgepole Public Schools for three years and superintendent of Bayard Public Schools for twenty-four years; and

WHEREAS, Mr. Cundall has received many awards and recognition including the Distinguished Service Award from the Nebraska School Activities Association, the Outstanding Service Award from the Nebraska Association of Activity Directors, and was inducted into the Chadron State College Athletic Hall of Fame; and

WHEREAS, Mr. Cundall has served on statewide educational committees, fifteen years on the Nebraska School Activities Association Board of Control, numerous other boards, and participated in various civic

organizations in Bayard, Nebraska, where he is presently a member of the city council; and

WHEREAS, Mr. Cundall has served as a great leader and role model for the students, faculty, and staff during his many years of service to both his schools and his community; and

WHEREAS, Mr. Cundall will be retiring this year.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates Leroy Cundall for his many years of service to the schools and communities of Nebraska.

2. That a copy of this resolution be sent to Leroy Cundall.

Laid over.

LEGISLATIVE RESOLUTION 402. Introduced by Erdman, 47; Smith, 48.

WHEREAS, Bill Pile taught and coached six years at Sioux County High School where his wrestling team won the 1975 State Wrestling Championship and he was selected Class D wrestling coach of the year. His team holds the Class D record for consecutive duel wins having won thirty-three in a row and the record for consecutive regular season tournament championships of twenty-four wins; and

WHEREAS, Mr. Pile served as principal at Mullen High School for sixteen years during which time he was also athletic director, head coach for wrestling, girl's basketball, and golf as well as teaching an evening accounting class for Mid-Plains College. Also, while at Mullen, Mr. Pile was inducted into the Chadron State College Hall of Fame and served two-year terms in the positions of Loup Valley Conference Secretary and Loup Valley Conference President; and

WHEREAS, Mr. Pile held the position of superintendent for Leyton Public Schools and later shared superintendent for Leyton and Potter-Dix Public Schools; and

WHEREAS, Mr. Pile has received numerous awards and recognition including membership on an advisory committee to the State Department of Education for the development of the state report card, induction into the Nebraska Wrestling Coaches Hall of Fame, recipient of the Distinguished Service Award from the Nebraska School Activities Association, and appointment by Governor Johanns to the board of the Coordinating Commission for Postsecondary Education; and

WHEREAS, Mr. Pile will be retiring this year; and

WHEREAS, Mr. Pile, throughout his professional coaching, teaching and administrative career, has touched the lives of numerous athletes, students, faculty, and staff by providing a challenging and positive learning environment as well as exemplary leadership.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates Bill Pile for his many years of service to the schools and communities of Nebraska.
2. That a copy of this resolution be sent to Bill Pile.

Laid over.

EXPLANATION OF VOTE

Had I been present, I would have voted "aye" on final passage of LB 1089.

(Signed) Mick Mines

VISITORS

Visitors to the Chamber were John and James Rundel from Trenton; Coby Block from Gothenburg; 24 fourth-grade students and teacher from Plattsmouth; Senator Mines' daughter, Laini Mines, from Blair; 30 advanced nursing students from Creighton University; 5 kindergarten through eighth-grade home school students from Fairbury; 50 fourth-grade students and teachers from Sandoz Elementary School, Omaha; and 8 kindergarten through fourth-grade students and teachers from Garfield School, Butler County.

MOTION - Adjournment

Senator Landis moved to adjourn. The motion prevailed with 19 ayes, 15 nays, 9 present and not voting, and 6 excused and not voting, and at 1:44 p.m., the Legislature adjourned until 9:00 a.m., Tuesday, April 13, 2004.

Patrick J. O'Donnell
Clerk of the Legislature